

INSURANCE DIVISION[191]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 508E.4 and 2008 Iowa Acts, Senate File 2392, section 19, the Insurance Division hereby amends Chapter 48, “Viatical and Life Settlements,” Iowa Administrative Code.

The rules in Chapter 48 provide for the administration of viatical and life settlements in this state by providing rules under which viatical and life settlements may be made and safeguards by which viatical settlement providers may be monitored and remain in good standing. The amendments update the rules to reflect recent changes to Iowa Code chapter 508E as amended by 2008 Iowa Acts, Senate File 2392. The Division intends that Iowa viatical settlement brokers and providers will comply with these rules for all viatical settlement purchase agreements issued on or after August 20, 2008.

In compliance with Iowa Code section 17A.4(2), the Division finds that notice and public participation are unnecessary because the amendments are a product of cooperation between the Division and interested parties, and are based on model language developed by the National Association of Insurance Commissioners. Further, the amendments adopted here are necessary for the administration of 2008 Iowa Acts, Senate File 2392, which became effective July 1, 2008.

The Division also finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of the amendments, 35 days after publication, should be waived and these amendments should be made effective on August 20, 2008, because 2008 Iowa Acts, Senate File 2392, became effective July 1, 2008.

The Insurance Division adopted these amendments on August 20, 2008.

These amendments are also published herein under Notice of Intended Action as **ARC 7154B** to allow public comment.

These amendments became effective on August 20, 2008.

These amendments are intended to implement Iowa Code chapter 508E as amended by 2008 Iowa Acts, Senate File 2392; Iowa Code chapters 252J and 261; and 2008 Iowa Acts, Senate File 2428.

The following amendments are adopted.

ITEM 1. Amend rule 191—48.1(508E) as follows:

191—48.1(508E) Purpose and authority. The purpose of this chapter is to provide for the administration of viatical and life settlements in this state by providing rules under which viatical and life settlements may be made, disclosures and other provisions by which viators may be protected, and safeguards by which viatical settlement providers may be monitored and remain in good standing. These rules are adopted by the commissioner pursuant to the authority in Iowa Code chapter 508E as amended by 2008 Iowa Acts, Senate File 2392.

ITEM 2. Amend rule 191—48.2(508E), as follows:

191—48.2(508E) Definitions. For purposes of this chapter, the definitions in Iowa Code chapter 508E as amended by 2008 Iowa Acts, Senate File 2392, are incorporated by reference. In addition, the following definitions shall apply:

ITEM 3. Rescind the “Advertising” “Business character report” “Business of viatical settlements” “Escrow agent” “Financing entity” “Person” “Policy” “Related provider trust” “Special purpose entity” “Viatical settlement broker” “Viatical settlement contract” “Viatical settlement investment agent” “Viatical settlement investment contract” “Viatical settlement provider” “Viatical settlement purchaser” “Viaticated policy” “Viator” in rule **191—48.2(508E).**

ITEM 4. Adopt the following **new** “Commissioner’s Web site” in rule **191—48.2(508E):**

“*Commissioner’s Web site*” means the Web site of the commissioner and of the Iowa insurance division, www.iid.state.ia.us.

ITEM 5. Amend rule 191—48.3(508E) as follows:

191—48.3(508E) License requirements.

48.3(1) Viatical settlement provider. ~~A person shall not operate as a viatical settlement provider without first obtaining a license from the commissioner of the state of residence of the viator.~~

~~a. Upon the filing of an~~ To be considered for licensure as a viatical settlement provider, pursuant to 2008 Iowa Acts, Senate File 2392, section 3, a person must complete the viatical settlement provider application form, to be found at the commissioner's Web site, file with the commissioner the completed application in the format prescribed by the commissioner, and include the payment of an application fee in the amount of \$100 and the costs of an initial examination, the commissioner shall make an investigation of each applicant and issue a license if the commissioner finds that. An application shall not be deemed filed until all information necessary to process the application has been received by the commissioner. In addition to complying with 2008 Iowa Acts, Senate File 2392, section 3, the applicant also shall provide the following:

~~(1) Has provided a detailed plan of operation, which includes details of the proposed operation in this state;~~

~~(2) Is competent and trustworthy and intends to act in good faith in the capacity of viatical settlement provider;~~

~~(3) Has a good business reputation and has had experience, training or education so as to be qualified in the business of a viatical settlement provider;~~

~~(4) If a legal entity, has provided proof of licensure and a certificate of good standing from the state of its domicile;~~

~~(5) Has provided either:~~

~~1. — A copy of the current year's audited financial statement, and a copy of audited financial statements for each of the previous five years; or~~

~~2. — At the commissioner's discretion, a copy of the current year's consolidated annual audited financial statement with a financial guarantee from the provider's ultimate controlling person, and unaudited financial statements from the provider for the current year and each of the previous five years;~~

(1) Copies of the provider's audited financial statements for the current year and each of the previous five years. At the commissioner's discretion, the applicant also shall provide a copy of the current year's consolidated annual audited financial statement with a financial guarantee from the provider's ultimate controlling person, and copies of the provider's unaudited financial statements for the current year and each of the previous five years;

~~(6) (2) Maintains Evidence that the applicant maintains books and records in compliance with generally accepted accounting principles;~~

~~(7) Has provided proof of a fidelity bond on each officer and director in the amount of \$100,000 issued by an insurance carrier rated with one of the four highest categories by A.M. Best, or a comparable rating by another rating agency;~~

(3) If a legal entity intending to have any partners, officers, members, and designated employees act as viatical settlement providers or viatical settlement brokers under the legal entity's license, pursuant to 2008 Iowa Acts, Senate File 2392, section 3, all completed forms, fees, and information required to be filed under subrule 48.3(2) for each such person named in the application and any supplements to the application;

(8) (4) Has provided business character reports for the following: officers and directors (as listed on the most recent financial statement), key managerial personnel (including any vice presidents or other individuals who will control the operations of the applicant), and individuals with a 10 percent or more beneficial ownership in the applicant who will exercise control over the applicant. Biographical affidavits, in a form prescribed by the commissioner, for the following: officers and directors (as listed on the most recent financial statement), key managerial personnel (including any vice presidents or other individuals who will control the operations of the applicant), and individuals with a 10 percent or more beneficial ownership in the applicant who will exercise control over the applicant;

(5) An independent business character report on the individuals listed in subparagraph (4). The business character report shall be filed directly with the commissioner by the independent third party that certified the report. The business character report shall be in a format prescribed by the commissioner and shall not be older than one year prior to the date the application is filed. For purposes of subparagraph (5), “business character report” means a statement certified by an independent third party which has conducted a comprehensive review of the applicant’s background and has indicated that the biographical information provided in the report, as completed by the applicant, has no inaccurate or conflicting information. An independent third party is one that has no affiliation with the applicant and is in the business of providing background checks or investigations. Business character reports must be current and shall not be older than one year prior to the date the application is filed. The business character report shall be in the format prescribed by the commissioner;

~~(9)~~ (6) Has provided the initial Initial viatical settlement contracts and disclosure statements that have been or are being submitted for approval and such contracts and statements that have been approved or that are approved during the course of the application process;

~~(10)~~ (7) Has provided information regarding the identity of the escrow agent to be used A copy of the provider trust, pursuant to 48.3(1) “c”; and

~~(11)~~ (8) Has provided a A report of any civil, criminal or administrative actions taken or pending against the viatical settlement provider in any state or federal court or agency, regardless of outcome, excluding misdemeanor traffic citations and juvenile offenses.

b. The commissioner shall have authority, at any time, to require the applicant to fully disclose the identity of all stockholders, partners, officers, members and employees, and the commissioner may, in the exercise of the commissioner’s discretion, refuse to issue a license in the name of a legal entity if not satisfied that any officer, employee, stockholder, partner or member thereof who may materially influence the applicant’s conduct meets the standards of this rule. A form for the antifraud plan that is required to be submitted with an application, pursuant to 2008 Iowa Acts, Senate File 2392, section 3, to meet the requirements of 2008 Iowa Acts, Senate File 2392, section 15, can be found on the commissioner’s Web site.

c. The provider trust that is required to be submitted with an application, pursuant to subparagraph 48.3(1) “a”(7), shall be in a format acceptable to the commissioner and shall include the following provisions:

- (1) The provider trust cannot be terminated without the prior written consent of the commissioner.
- (2) The provider trust is subject to the prior approval of the commissioner.
- (3) The provider trust funds shall not be intermingled.
- (4) The provider trust funds held shall be identified based on individual policyholders.
- (5) The provider trust trustee is obligated to indemnify the provider or the policyholder or both for any lost funds.

(6) The agreement can only be amended or terminated with the prior written consent of the commissioner.

(7) The provider trust trustee shall be a bank or trust company, having its principal place of business in the United States.

(8) The provider trust trustee shall be audited annually by independent public accountants and complete the audit report, related financial statements, and opinion on internal controls. All reports shall be available for review by the commissioner.

~~e.~~ d. In addition to the information required in this subrule, the commissioner may ask for other information necessary to determine whether the applicant for a license as a viatical settlement provider complies with the requirements of this subrule.

48.3(2) Viatical settlement broker. Effective July 1, 2002, a person shall not operate as a viatical settlement broker without first obtaining a license from the commissioner of the state of residence of the viator. Upon the filing of an application in the format prescribed by the commissioner and the payment of an application fee in the amount of \$100, the commissioner shall make an investigation of each applicant and issue a license if the commissioner finds that the applicant:

a. To be considered for licensure as a viatical settlement broker, pursuant to 2008 Iowa Acts, Senate File 2392, section 3, a person must complete the viatical settlement broker application form, to be found at the commissioner's Web site, file the completed application in the format prescribed by the commissioner, and include the payment of an application fee in the amount of \$100. In addition to finding compliance with 2008 Iowa Acts, Senate File 2392, section 3, the commissioner also shall find that the applicant:

~~a. (1)~~ Has passed the test required by the commissioner or has taken and passed a test on viatical and life settlement contracts required by another state insurance department;

~~b. Is competent and trustworthy and intends to act in good faith in the capacity of viatical settlement broker;~~

~~c. Has a good business reputation and has had experience, training or education so as to be qualified in the business of a viatical settlement broker;~~

~~d. (2)~~ Has provided a report of any civil, criminal or administrative actions taken or pending against the viatical settlement broker in any state or federal court or agency, regardless of outcome, excluding misdemeanor traffic citations and juvenile offenses; and

~~e. (3)~~ Has provided proof that the applicant is covered by an errors and omissions policy for an amount of not less than \$100,000 liability per occurrence and not less than \$100,000 total annual aggregate for all claims during the policy period.

b. If a person is a life insurance producer who meets the requirements of 2008 Iowa Acts, Senate File 2392, section 3, the requirements of paragraph 48.3(2) "a" shall be deemed to have been met, and the life insurance producer shall file a form, to be found at the commissioner's Web site, and shall include the payment of \$100. The one year that a life insurance producer must be licensed to meet the requirements of 2008 Iowa Acts, Senate File 2392, section 3, shall immediately precede the producer's request for a viatical settlement broker license.

c. A form for the antifraud plan that is required to be submitted with an application, pursuant to 2008 Iowa Acts, Senate File 2392, section 3, to meet the requirements of 2008 Iowa Acts, Senate File 2392, section 15, can be found on the commissioner's Web site.

d. In addition to the information required in this subrule, the commissioner may ask for other information necessary to determine whether the applicant for a license as a viatical settlement broker complies with the requirements of this subrule.

48.3(3) Governing law where viators are residents of different states. For purposes of this subrule, if there is more than one viator on a single policy and the viators are residents of different states, the viatical settlement contract shall be governed by the law of the state in which the viator having the largest percentage ownership resides or, if the viators hold equal ownership, the state of residence of one viator agreed upon in writing by all viators. If another state does not have a substantially similar statute or rule substantially similar to Iowa Code chapter 508E as amended by 2008 Iowa Acts, Senate File 2392, and this rule, the actions related to the viatical settlement contract shall be governed by the law of this state.

~~**48.3(4) Commissioner to be used for service of process.** The commissioner shall not issue a license to an applicant unless either a written designation of an agent for service of process is filed and maintained with the commissioner or the applicant has filed with the commissioner the applicant's written irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the commissioner.~~

~~**48.3(5)**~~ **48.3(4) License term.**

a. A viatical settlement provider or viatical settlement broker who meets the requirements of this rule, unless otherwise denied licensure pursuant to rule ~~48.12(508E)~~ 48.10(508E), shall be issued a license.

b. A viatical settlement provider license is valid for one year and automatically terminates on ~~March 31 of the renewal year~~ the last day of the month of the anniversary of the issue date unless renewed pursuant to subrule 48.3(6).

c. A viatical settlement broker license is valid for ~~three years~~ an initial term of one year from the last day of the applicant's birth month following the issuance of the license, and automatically terminates

on ~~March 31 of the renewal year~~ the last day of the month of the initial term unless renewed pursuant to subrule 48.3(6).

d. A viatical settlement provider license or a viatical settlement broker license may remain in effect for the term of the license plus any renewals, unless the license is revoked or suspended, as long as all required fees are paid in the time prescribed by the commissioner.

e. The license issued to a viatical settlement provider or viatical settlement broker shall be a limited license that allows the licensee to operate only within the scope of its license.

~~48.3(6)~~ **48.3(5)** *Continuing education for viatical settlement broker.*

a. ~~A viatical settlement broker~~ An individual licensed as a viatical settlement broker shall complete ~~36~~ 15 credits of approved continuing education during ~~each~~ every two license ~~term~~ terms. A license term is as set forth in paragraph 48.3(5)“c.” 48.3(4)“c,” and, for purposes of this rule, the two-term continuing education requirement shall be called the “CE reporting term.” Viatical settlement broker continuing education courses will be approved in the same manner that insurance continuing education courses are approved pursuant to 191—Chapter 11. A viatical settlement broker who successfully completes the examination for a viatical settlement broker license will be deemed to have completed sufficient continuing education for the license term in which the viatical settlement broker completed the examination.

b. The required continuing education credits shall include a minimum of:

~~(1) Eighteen credits in life insurance;~~

~~(2) (1) Fifteen~~ Thirteen credits ~~in viaticals~~ related to viatical settlements and viatical settlement transactions; and

~~(3) (2) Three~~ Two credits in ethics.

c. The viatical settlement broker may submit the same completed credits to the ~~division~~ commissioner both to meet the continuing education requirements for the viatical settlement broker license and to meet the continuing education requirements for an applicable insurance producer license.

d. and e. No change.

f. A viatical settlement broker cannot carry over from one ~~license~~ CE reporting term to the next continuing education credits earned in excess of the viatical settlement broker’s ~~license~~ CE reporting term requirements.

g. and h. No change.

i. A viatical settlement broker cannot receive continuing education credit for the same course twice in one ~~license~~ CE reporting term. A viatical settlement broker cannot receive continuing education credit both for the classroom portion and for the examination portion of a national designation program as defined in 191—subrule 11.5(5).

j. to l. No change.

m. Viatical settlement broker continuing education courses will be approved in the same manner that insurance continuing education courses are approved pursuant to 191—Chapter 11. The approval of continuing education providers, the responsibilities of continuing education providers, the prohibited conduct for continuing education providers, and the fees for approval and renewal of continuing education providers and courses shall be the same as those for insurance continuing education courses, continuing education providers, and insurance producers set forth in rules 191—11.9(505,522B) to 191—11.11(505,522B) and 191—11.14(505,522B). The commissioner may enter into a contractual arrangement with a qualified outside vendor to assist the commissioner with any or all continuing education services in the same manner as the commissioner may for insurance continuing education services pursuant to rule 191—11.12(505,522B). The commissioner may audit any continuing education course in the same manner as the commissioner may for insurance continuing education courses pursuant to rule 191—11.13(505,522B).

~~48.3(7)~~ **48.3(6)** *License renewal.* A viatical settlement provider license or a viatical settlement broker license may be renewed as follows:

a. A viatical settlement provider license may be renewed by payment of \$100 ~~within the time prescribed by the commissioner~~ within 60 days prior to the expiration date of the license and by demonstration that the viatical settlement provider continues to meet the requirements of 2008 Iowa

Acts, Senate File 2392, section 3 and subrule 48.3(1), has provided biographical affidavits not older than one year prior to the renewal date on all persons listed in subparagraph 48.3(1) "a"(4), has provided business character reports for any new persons listed in subparagraph 48.3(1) "a"(4), and has provided the reports required by rule ~~48.6(508E)~~ 48.7(508E).

(1) If renewal is approved, the license will be renewed effective ~~March 31 of~~ the last day of the month of the anniversary of the issue date in the renewal year, will be valid for one year, and will automatically terminate on ~~March 31 of~~ the last day of the month of the anniversary of the issue date in the following renewal year unless renewed pursuant to ~~this~~ subrule 48.3(6).

(2) Viatical settlement providers that had licenses prior to January 1, 2009, shall have a renewal date of January 1.

b. A viatical settlement broker license may be renewed by demonstration of completion of continuing education as required in subrule ~~48.3(6)~~ 48.3(5) and payment of \$100 within 60 days prior to the expiration date of the license. If renewal is approved, the license will be renewed effective ~~March 31 of~~ the last day of the month of the anniversary of the issue date in the renewal year, will be valid for ~~three years~~ one year, and will automatically terminate on ~~March 31 of~~ the last day of the month of the anniversary of the issue date in the following renewal year unless renewed pursuant to subrule ~~48.3(7)~~ 48.3(6).

c. If a legal entity has any partners, officers, members, or designated employees acting as viatical settlement providers or viatical settlement brokers under the legal entity's license, pursuant to 2008 Iowa Acts, Senate File 2392, section 3, the legal entity must provide all completed forms, fees, and information required to be filed under paragraphs 48.3(6) "a" and "b" for each such person named in the application, or in any supplements to the application, and must provide any deletions to the list of names that was provided with the original application. If there are any new partners, officers, members, and designated employees that the legal entity intends will act as viatical settlement providers or viatical settlement brokers under the legal entity's license, the legal entity shall provide for each such person the forms, information and fees required by subrule 48.3(2).

~~e. d.~~ If a viatical settlement provider or viatical settlement broker fails to ~~pay the renewal fee~~ comply with the renewal procedures within the time prescribed, or a viatical settlement provider fails either to meet the requirements of 2008 Iowa Acts, Senate File 2392, section 3, and subrule 48.3(1) or to submit the reports required in rule ~~48.6(508E)~~ 48.7(508E), such nonpayment or failure shall result in lapse of the license.

~~d. e.~~ A licensed viatical settlement broker who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance may request from the commissioner a waiver of renewal procedures. Such viatical settlement broker may also request a waiver of any examination requirement or any other penalty or sanction imposed for failure to comply with renewal procedures.

48.3(7) License reinstatement.

a. A viatical settlement broker may reinstate an expired license up to 12 months after the license expiration date by proving that during the CE reporting term the viatical settlement broker met the CE requirements found in subrule 48.3(5), and by paying to the commissioner a reinstatement fee and license renewal fee. A viatical settlement broker who fails to apply for license reinstatement within 12 months of the license expiration date must apply for a new license.

b. A viatical settlement broker who has surrendered a license for a nondisciplinary reason and stated an intent to exit the viatical settlement business may file a request to reactivate the license. The request must be received by the commissioner within 90 days of the date the license was placed on inactive status. The request will be granted if the former viatical settlement broker is otherwise eligible to receive the license. If the request is not received within 90 days, the viatical settlement broker must apply for a new license.

48.3(8) Reinstatement or reissuance of a license after suspension, revocation or forfeiture in connection with disciplinary matters; and forfeiture in lieu of compliance.

a. The term "reinstatement" as used in this subrule means the reinstatement of a suspended license. The term "reissuance" as used in this subrule means the issuance of a new license following either the

revocation of a license or the forfeiture of a license in connection with a disciplinary matter. This subrule does not apply to the reinstatement of an expired license.

b. Any viatical settlement broker whose license has been revoked or suspended by order, or who forfeited a license in connection with a disciplinary matter, may apply to the commissioner for reinstatement or reissuance in accordance with the terms of the order of revocation or suspension or the order accepting the forfeiture.

(1) All proceedings for reinstatement or reissuance shall be initiated by the applicant who shall file with the commissioner an application for reinstatement or reissuance of a license.

(2) An application for reinstatement or reissuance shall allege facts which, if established, will be sufficient to enable the commissioner to determine that the basis of revocation, suspension or forfeiture of the applicant's license no longer exists and that it will be in the public interest for the application to be granted. The burden of proof to establish such facts shall be on the applicant.

(3) A viatical settlement broker may request reinstatement of a suspended license prior to the end of the suspension term.

(4) Unless otherwise provided by law, if the order of revocation or suspension did not establish terms upon which reinstatement or reissuance may occur, or if the license was forfeited, an initial application for reinstatement or reissuance may not be made until at least one year has elapsed from the date of the order of the suspension (notwithstanding 191—paragraph 10.10(2)“c”), revocation, or acceptance of the forfeiture of a license.

c. All proceedings upon the application for reinstatement or reissuance, including matters preliminary and ancillary thereto, shall be held in accordance with Iowa Code chapter 17A. Such application shall be docketed in the original case in which the original license was suspended, revoked, or forfeited, if a case exists.

d. An order of reinstatement or reissuance shall be based upon a written decision which incorporates findings of fact and conclusions of law. An order granting an application for reinstatement or reissuance may impose such terms and conditions as the commissioner or the commissioner's designee deems desirable, which may include one or more of the types of disciplinary sanctions provided by this chapter or by Iowa Code chapter 508E amended by 2008 Iowa Acts, Senate File 2392. The order shall be a public record, available to the public, and may be disseminated in accordance with Iowa Code chapter 22.

e. A request for voluntary forfeiture of a license shall be made in writing to the commissioner. Forfeiture of a license is effective upon submission of the request unless a contested case proceeding is pending at the time the request is submitted. If a contested case proceeding is pending at the time of the request, the forfeiture becomes effective when and upon such conditions as required by order of the commissioner. A forfeiture made during the pendency of a contested case proceeding is considered disciplinary action and shall be published in the same manner as is applicable to any other form of disciplinary order.

f. A license may be voluntarily forfeited in lieu of compliance with an order of the commissioner or the commissioner's designee with the written consent of the commissioner. The forfeiture becomes effective when and upon such conditions as required by order of the commissioner, which may include one or more of the types of disciplinary sanctions provided by this chapter or by Iowa Code chapter 508E as amended by 2008 Iowa Acts, Senate File 2392.

g. When a viatical settlement broker's license has been suspended for a period of time which extends beyond the viatical settlement broker's license expiration date, the license will terminate at the license expiration date, and the viatical settlement broker must request reinstatement pursuant to subrule 48.3(7). If suspension for a period of time ends prior to the viatical settlement broker's license expiration date, the commissioner shall reinstate the license at the end of the suspension period pursuant to paragraph 48.3(8)“b.” The commissioner is not prohibited from bringing an additional immediate action if the viatical settlement broker has engaged in misconduct during the period of suspension.

48.3(8) 48.3(9) *Duty to notify commissioner of cessation of business in the state.* If a viatical settlement provider intends to cease business in Iowa, it must notify the commissioner of those intentions and of its plan of operation for such cessation at least 180 days before the cessation shall

occur. This requirement ensures that servicing of the viatical settlement investment contracts continues and all current business can be completed. This requirement is not meant to imply that a company must continue to accept new viatical or life settlement business during the 180-day period.

~~48.3(9)~~ 48.3(10) Duty to notify commissioner of changes.

a. to c. No change.

~~48.3(10)~~ 48.3(11) Commissioner may use outside assistance. In order to assist with the commissioner's duties, the commissioner may contract with a nongovernmental entity, including, but not limited to, the National Association of Insurance Commissioners (NAIC) or any affiliate or subsidiary the NAIC oversees, to perform any ministerial functions related to licensing of viatical settlement providers or viatical settlement brokers that the commissioner deems appropriate including, but not limited to, the collection of fees.

ITEM 6. Amend rule 191—48.4(508E) as follows:

191—48.4(508E) Approval of viatical settlement contracts and disclosure Disclosure statements.

~~48.4(1)~~ A viatical settlement provider or viatical settlement broker shall not use a viatical settlement application, a viatical settlement contract or a viatical settlement disclosure statement form in this state unless it has been filed with and approved by the commissioner. The commissioner shall disapprove a viatical settlement form or disclosure statement if, in the commissioner's opinion, the provisions contained therein are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the viator. At the commissioner's discretion, the commissioner may require the submission of advertising material.

~~48.4(2)~~ The initial viatical settlement contracts and disclosure statements shall be filed for approval with the viatical settlement provider's application for licensure, as required under subparagraph 48.3(1) "a"(9). A distinct form number shall be assigned to each viatical settlement form the provider will be using.

~~48.4(3)~~ 48.4(1) If a viatical settlement provider enters into a viatical settlement contract that allows the viator to retain an interest in the policy, the viatical settlement contract shall contain the following:

a. to c. No change.

~~48.4(2)~~ With each application for a viatical settlement contract, a viatical settlement provider or viatical settlement broker shall provide the viator with at least the following disclosure no later than the time the application for the viatical settlement contract is signed by the viator and the viatical settlement broker. The disclosure shall be provided in a separate document that is signed by the viator and the viatical settlement provider or viatical settlement broker, and shall advise the viator that, when entering into a viatical settlement contract, having a recent physical examination is in the viator's best interest, since an accurate life expectancy can be best calculated based on current medical records.

~~48.4(3)~~ If the viator is not the insured, then these disclosures must be affirmatively made to the insured, as well as to the viator, and written consent to the viatication must be received from both parties.

~~48.4(4)~~ In order to ensure that viators receive a reasonable return for viaticating an insurance policy when life expectancy is less than 25 months, a viatical settlement provider shall pay to a viator a discounted amount of the face value of the policy which amount shall be calculated at least at the following rates:

<u>Insured's Life Expectancy</u>	<u>Minimum Percentage of Face Value Less Outstanding Loans Received by Viator</u>
Less than 6 months	80%
At least 6 but less than 12 months	70%
At least 12 but less than 18 months	65%
At least 18 but less than 25 months	60%
25 months or more	Cash surrender value of policy

The percentage may be reduced by 5% for viaticating a policy written by an insurer rated less than the highest four categories by A.M. Best, or a comparable rating by another rating agency.

For a viatical settlement in which the viator has a life expectancy of 25 months or more, a viatical settlement provider or broker shall not enter into a viatical settlement contract that provides a payment to the viator that is unreasonable or unjust. As listed above, such payment must at least be equal to the cash surrender value of the policy. In determining whether a payment is unreasonable or unjust, the commissioner may consider, among other factors, the life expectancy of the insured; the applicable rating of the insurance company that issued the subject policy by a rating service generally recognized by the insurance industry, regulators and consumer groups; and prevailing discount rates in the viatical and life settlement market in Iowa or, if insufficient data is available for Iowa, the prevailing rates nationally or in other states that maintain this data.

~~48.4(5) If a viatical settlement provider subsequently desires to change the viatical settlement contract documents or disclosure statements approved at the time of licensure, the provider shall submit the modified contract documents or disclosure statements to the commissioner for approval in triplicate, along with a postage paid return envelope. The viatical settlement provider shall identify its name and address in the cover letter and also reference the form number of the modified viatical settlement contract document or disclosure statement. Black lining the modifications made within the document(s) should expedite the form review and approval process.~~

ITEM 7. Rescind rule 191—48.5(508E) and adopt the following **new** rule in lieu thereof:

191—48.5(508E) Contract requirements. In order to ensure that viators receive a reasonable return for viaticating an insurance policy when life expectancy is less than 25 months, a viatical settlement provider shall pay to a viator a discounted amount of the face value of the policy which amount shall be calculated at least at the following rates:

Insured's Life Expectancy	Minimum Percentage of Face Value Less Outstanding Loans Received by Viator
Less than 6 months	80%
At least 6 but less than 12 months	70%
At least 12 but less than 18 months	65%
At least 18 but less than 25 months	60%
25 months or more	Cash surrender value of policy

The percentage may be reduced by 5% for viaticating a policy written by an insurer rated less than the highest four categories by A.M. Best, or a comparable rating by another rating agency.

For a viatical settlement in which the viator has a life expectancy of 25 months or more, a viatical settlement provider or broker shall not enter into a viatical settlement contract that provides a payment to the viator that is unreasonable or unjust. As listed above, such payment must at least be equal to the cash surrender value of the policy. In determining whether a payment is unreasonable or unjust, the commissioner may consider, among other factors, the life expectancy of the insured; the applicable rating of the insurance company that issued the subject policy by a rating service generally recognized by the insurance industry, regulators and consumer groups; and prevailing discount rates in the viatical and life settlement market in Iowa or, if insufficient data is available for Iowa, the prevailing rates nationally or in other states that maintain this data.

ITEM 8. Rescind rule **191—48.7(508E)**.

ITEM 9. Renumber rule **191—48.6(508E)** as **191—48.7(508E)**.

ITEM 10. Adopt the following new rule 191—48.6(508E):

191—48.6(508E) Filing of forms. If a viatical settlement provider subsequently desires to change the viatical settlement contract documents or disclosure statements approved at the time of licensure, or to use new ones, the provider shall submit the new or modified contract documents or disclosure statements to the commissioner for approval in triplicate, along with a postage-paid return envelope. The viatical settlement provider shall identify its name and address in the cover letter and also reference the form number of the modified viatical settlement contract document or disclosure statement. Black-lining the modifications made within the document(s) should expedite the form review and approval process.

ITEM 11. Amend renumbered rule 191—48.7(508E) as follows:

191—48.7(508E) Reporting requirements.

48.7(1) On March 1 of each calendar year, the secretary and either the president or the vice president of each viatical settlement provider licensed in this state shall ~~make a report~~ submit, under oath, ~~of the following: the annual statement required by 2008 Iowa Acts, Senate File 2392, section 6; a report of all viatical settlement transactions in which the viator is a resident of this state; and a report for all states in the aggregate, that contains the~~ The report shall contain the following information for the previous calendar year:

a. to e. No change.

48.7(2) No change.

ITEM 12. Amend rule 191—48.8(508E) as follows:

191—48.8(508E) Examination or investigations.

48.8(1) Authority, scope and scheduling of examinations. In addition to the authority, scope and scheduling of examinations set forth in 2008 Iowa Acts, Senate File 2392, section 7, the following provisions shall apply:

~~*a.* —The commissioner may conduct an examination of a viatical settlement provider or viatical settlement broker as often as the commissioner deems appropriate.~~

~~*b.* —For purposes of completing an examination under this chapter, the commissioner may examine or investigate any person, or the business of any person, insofar as the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the viatical settlement provider or viatical settlement broker.~~

~~*c. a.* The commissioner may investigate suspected fraudulent viatical settlement acts and persons engaged in the business of viatical settlements.~~

~~*d.* —In lieu of an examination of any foreign or alien viatical settlement provider or viatical settlement broker licensed in this state, the commissioner may, at the commissioner's discretion, accept an examination report on the viatical settlement provider or viatical settlement broker as prepared by the commissioner for the viatical settlement provider's or viatical settlement broker's state of domicile or port of entry state.~~

~~*e. b.* The provisions of Iowa Code chapter 507 shall apply to viatical settlement providers and viatical settlement brokers. The commissioner shall examine the affairs, transactions, accounts, records and assets of each viatical settlement provider as often as the commissioner deems advisable. The expense of such examination examinations shall be assessed against the viatical settlement provider in the same manner as insurers are assessed for examinations.~~

~~*f. c.* Neither the commissioner nor any person that received the documents, material or other information while acting under the authority of the commissioner, including the NAIC and its affiliates and subsidiaries, shall be permitted to testify in any private civil action concerning any confidential documents, materials or information subject to this subrule.~~

~~48.8(2) Record retention requirements.~~

~~a. —Executed documents. A person required to be licensed by these rules shall retain copies of all of the following records until the earlier of five years after the death of the viator or until completion of an examination following the death of the viator:~~

~~(1) —Executed viatical settlement contracts, viatical settlement investment contracts, underwriting documents, policy forms, and applications from the date of the execution of the viatical settlement contract or viatical settlement investment contract, whichever is later; and~~

~~(2) —All checks, drafts or other evidence and documentation related to the payment, transfer, deposit or release of viatical settlement contract funds from the date of the transaction; and~~

~~(3) —All other records and documents related to the requirements of this rule.~~

~~b. —Unexecuted documents. A person required to be licensed by these rules shall retain copies of all of the following records for one year: viatical settlement contracts, viatical settlement investment contracts, underwriting documents, policy forms, and applications that were proposed but not accepted by a potential viator, from the date of the proposed viatical settlement contract or viatical settlement investment contract, whichever is later.~~

~~c. —This subrule does not relieve a person of the obligation to produce these documents to the commissioner after the retention period has expired if the person has retained the documents.~~

~~d. —Records required to be retained by this subrule must be legible and complete and may be retained in paper, photograph, microprocess, magnetic, mechanical, or electronic media, or by any process that accurately reproduces or forms a durable medium for the reproduction of a record.~~

~~48.8(3) 48.8(2) Immunity from liability.~~ No cause of action shall arise nor shall any liability be imposed against the commissioner, the commissioner's authorized representatives or any examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this rule or of Iowa Code chapter 508E as amended by 2008 Iowa Acts, Senate File 2392.

ITEM 13. Amend rule 191—48.9(508E) as follows:

191—48.9(508E) Requirements and prohibitions.

48.9(1) A viatical settlement investment agent shall not have any contact directly or indirectly with the viator or have knowledge of the identity of the viator.

48.9(2) A viatical settlement investment agent is deemed to represent the viatical settlement provider with whom the viatical settlement investment agent is appointed or contracted.

48.9(3) Notwithstanding the manner in which the viatical settlement broker is compensated, a viatical settlement broker is deemed to represent only the viator and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interest of the viator.

48.9(4) Before entering into a viatical settlement contract, a viatical settlement provider shall obtain:

~~a. —If the viator is the insured, a written statement from a licensed attending physician that the viator is of sound mind and under no constraint or undue influence to enter into a viatical settlement contract; and~~

~~b. —A document in which the insured consents to the release of the insured's medical records to a viatical settlement provider, a viatical settlement broker and the insurance company that issued the life insurance policy covering the life of the insured.~~

48.9(5) Within 20 days after a viator executes documents necessary to transfer any rights under an insurance policy or within 20 days of entering any agreement, option, promise or any other form of understanding, expressed or implied, to viaticate the policy, the viatical settlement provider shall give written notice to the insurer that issued the insurance policy that the policy has or will become a viaticated policy. The notice shall be accompanied by the documents required by subrule 48.9(6).

48.9(6) The viatical settlement provider shall deliver a copy of the medical release required under paragraph 48.9(4) "b," a copy of the viator's application for the viatical settlement contract, the notice required under subrule 48.9(5) and a request for verification of coverage to the insurer that issued the life insurance policy that is the subject of the viatical transaction. The NAIC's form for verification shall be used unless standards for verification are developed by the commissioner.

~~48.9(7)~~ The insurer shall respond to a request for verification of coverage submitted on an approved form by a viatical settlement provider within 30 calendar days of the date the request is received and shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation regarding the validity of the insurance contract.

~~48.9(8)~~ Prior to or at the time of execution of the viatical settlement contract, the viatical settlement provider shall obtain a witnessed document in which the viator consents to the viatical settlement contract, represents that the viator has a full and complete understanding of the viatical settlement contract, represents that the viator has a full and complete understanding of the benefits of the life insurance policy, acknowledges that the viator is entering into the viatical settlement contract freely and voluntarily and, for persons who are chronically ill or terminally ill under the definitions of Iowa Code sections 508E.2(1) and (3), acknowledges that the insured is chronically ill or terminally ill and that the chronic or terminal illness or condition was diagnosed after the life insurance policy was issued.

~~48.9(9)~~ All medical information solicited or obtained by any viatical settlement provider or viatical settlement broker shall be subject to the provisions of 191—Chapter 90, which governs the confidentiality of medical information.

~~48.9(10)~~ All viatical settlement contracts entered into in this state shall provide the viator with an unconditional right to rescind the viatical settlement contract for at least 15 calendar days from the receipt of the viatical settlement contract proceeds. If the insured dies during the viatical settlement contract rescission period, the viatical settlement contract shall be deemed to have been rescinded, subject to repayment to the viatical settlement provider or viatical settlement purchaser of all viatical settlement contract proceeds, and any premiums, loans, and loan interest that have been paid by the viatical settlement provider or viatical settlement purchaser.

~~48.9(11)~~ The viatical settlement provider shall instruct the viator to send the executed documents required to effect the change in ownership, assignment or change in beneficiary of the insurance policy or certificate directly to the independent escrow agent. Within three business days after the date the escrow agent receives the document (or from the date the viatical settlement provider receives the documents, if the viator erroneously provides the documents directly to the viatical settlement provider), the viatical settlement provider shall pay or transfer the proceeds of the viatical settlement contract into an escrow or trust account established with a state chartered or federally chartered financial institution whose deposits and accounts are insured by the Federal Deposit Insurance Corporation (FDIC) and with whom an escrow account has been established by a viatical settlement provider or viatical settlement purchaser. Upon payment of the settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership, assignment or change in beneficiary forms to the viatical settlement provider within three business days. Upon the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership, assignment or designation of beneficiary from the insurance company, the escrow agent shall pay the settlement proceeds to the viator within three business days.

~~48.9(12)~~ Failure to tender consideration to the viator for the viatical settlement contract within the time required by subrule 48.9(11) renders the viatical settlement contract voidable by the viator for lack of consideration until the time consideration is tendered to and accepted by the viator.

~~48.9(13)~~ Contacts with the insured for the purpose of determining the health status of the insured by the viatical settlement provider or viatical settlement broker after the viatical settlement has occurred shall only be made by the viatical settlement provider or viatical settlement broker licensed in this state or the provider's or broker's authorized representatives and shall be limited to once per year if the insured has a life expectancy of more than two years, once every three months for an insured with a life expectancy of more than one year, and no more than once per month for an insured with a life expectancy of one year or less. The viatical settlement provider or viatical settlement broker shall explain the procedure for these contacts at the time the viatical settlement contract is entered into. The limitations set forth in this subrule shall not apply to any contacts with an insured for reasons other than determining the insured's health status. Viatical settlement providers and viatical settlement brokers shall be responsible for the actions of their authorized representatives.

~~48.9(14)~~ 48.9(1) With respect to policies containing a provision for double or additional indemnity for accidental death, the additional payment shall remain payable to the beneficiary last named by the

viator prior to entering into the viatical settlement contract, or to such other beneficiary, other than the viatical settlement provider, as the viator may thereafter designate, or in the absence of a beneficiary, to the estate of the viator.

~~48.9(15) Payment by the escrow agent of the proceeds of a viatical settlement contract shall be by means of wire transfer to the account of the viator or by certified check or cashier's check.~~

~~48.9(16)~~ 48.9(2) Payment of the proceeds to the viator pursuant to a viatical settlement contract shall be made in a lump sum except where the viatical settlement provider has purchased a single-premium paid-up annuity issued by a licensed insurance company to the viator. Retention of a portion of the proceeds by the viatical settlement provider or escrow agent is not permissible. For purposes of this subrule, "escrow agent" means an individual or institution that has established an escrow or trust account with a state-chartered or federally chartered financial institution whose deposits and accounts are insured by the Federal Deposit Insurance Corporation (FDIC) and with which an escrow account has been established for use by a viatical settlement provider or viatical settlement purchaser.

~~48.9(17) A viatical settlement provider, viatical settlement broker or viatical settlement investment agent shall not provide identifying information about either the insured or the viator to any person, unless the insured and viator provide written consent to the release of the information at or before the time of the viatical settlement transaction pursuant to subrule 48.5(1) and rule 48.7(508E) or if such release is necessary to report suspected fraudulent viatical settlement acts pursuant to subrule 48.11(4).~~

~~48.9(18)~~ 48.9(3) A viatical settlement provider, viatical settlement broker or viatical settlement investment agent shall obtain from a person that is provided with identifying information about either the insured or the viator a signed affirmation that the person or entity will not further divulge the information without procuring the express, written consent of the insured or the viator for the disclosure. Notwithstanding the foregoing, if ~~If~~ a viatical settlement provider, or viatical settlement broker or viatical settlement investment agent is served with a subpoena and thereby compelled to produce records containing patient-identifying information, it ~~the~~ viatical settlement provider or viatical settlement broker shall notify the viator and the insured in writing at their ~~the~~ viator's and the insured's last-known addresses within five business days after receiving notice of the subpoena.

~~48.9(19)~~ 48.9(4) A viatical settlement provider shall not act also as a viatical settlement broker, whether entitled to collect a fee directly or indirectly, related to the same viatical settlement contract.

~~48.9(20)~~ 48.9(5) A viatical settlement broker shall not, without the written agreement of the viator obtained prior to performing any services in connection with a viatical settlement, seek or obtain any compensation from the viator.

~~48.9(21)~~ 48.9(6) A viatical settlement provider shall not use a longer life expectancy than is reasonable based on all medical and actuarial information available at the time of a viatical settlement transaction in order to reduce the payout to which the viator is entitled.

~~48.9(22)~~ 48.9(7) A viatical settlement provider or viatical settlement broker shall not discriminate in the making or solicitation of viatical settlement contracts on the basis of race, age, sex, national origin, creed, religion, occupation, marital or family status or sexual orientation, or discriminate between viators with or without dependents.

~~48.9(23)~~ 48.9(8) A viatical settlement provider or viatical settlement broker shall not pay or offer to pay any finder's fee, commission or other compensation to any insured's physician, or to an attorney, accountant or other person providing medical, legal or financial planning services to an insured or viator, or to any other person acting as an agent of an insured or viator with respect to a viatical settlement contract.

~~48.9(24)~~ 48.9(9) A viatical settlement provider shall not knowingly solicit individuals who have treated or have been asked to treat the illness of an insured whose coverage would be the subject of a viatical settlement contract.

~~48.9(25) A viatical settlement provider shall not structure a viatical settlement investment contract in a manner which requires an insurer to keep track of more than ten beneficiaries for each insurance contract being viaticated.~~

~~48.9(26) Viatical settlement contracts entered into within the first two years of issuance of insurance.~~

~~a. — A person shall not enter into a viatical settlement contract within a two-year period commencing with the date of issuance of the insurance policy or certificate unless the viator certifies to the viatical settlement provider that one or more of the following conditions have been met within the two-year period:~~

~~(1) — The policy was issued upon the viator's exercise of conversion rights arising out of a group or individual policy, provided the total of the time covered under the conversion policy plus the time covered under the prior policy is at least 24 months. The time covered under a group policy shall be calculated without regard to any change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship;~~

~~(2) — The viator is a charitable organization exempt from taxation under 26 U.S.C. §501(c)(3);~~

~~(3) — The viator submits independent evidence to the viatical settlement provider that one or more of the following conditions have been met within the two-year period:~~

~~1. — The viator or insured is terminally ill or chronically ill, as defined in Iowa Code section 508E.2(1) or (3);~~

~~2. — The viator's spouse dies;~~

~~3. — The viator divorces the viator's spouse;~~

~~4. — The viator retires from full-time employment;~~

~~5. — The viator becomes physically or mentally disabled and a physician determines that the disability prevents the viator from maintaining full-time employment;~~

~~6. — The viator was the insured's employer at the time the policy or certificate was issued and the employment relationship terminated;~~

~~7. — A final order, judgment or decree is entered by a court of competent jurisdiction, on the application of a creditor of the viator, adjudicating the viator bankrupt or insolvent, or approving a petition seeking reorganization of the viator or appointing a receiver, trustee or liquidator to all or a substantial part of the viator's assets;~~

~~8. — The viator experiences a significant decrease in income that is unexpected and that impairs the viator's reasonable ability to pay the policy premium; or~~

~~9. — The viator or insured disposes of ownership interests in a closely held corporation.~~

~~b. — Copies of the independent evidence described in this subrule and documents required by subrule 48.9(6) shall be submitted to the insurer when the viatical settlement provider submits a request to the insurer for verification of coverage. The copies shall be accompanied by a letter of attestation from the viatical settlement provider that the copies are true and correct copies of the documents received by the viatical settlement provider.~~

~~48.9(27) If a viatical settlement broker performs any of the activities required of the viatical settlement provider by this rule, the viatical settlement provider is deemed to have fulfilled the requirements of this rule.~~

~~48.9(28) Insurance company practices.~~

~~a. — Life insurance companies authorized to do business in this state shall respond to a request for verification of coverage from a viatical settlement provider or a viatical settlement broker within 30 calendar days of the date a request is received, including the insurer's intent to pursue an additional investigation regarding possible fraud or the validity of the insurance contract, subject to the following conditions:~~

~~(1) — A current authorization consistent with applicable law, signed by the policy owner or certificate holder, accompanies the request;~~

~~(2) — In the case of an individual policy, submission of a form substantially similar to the NAIC's most current form describing verification of coverage for individual policies, which has been completed by the viatical settlement provider or the viatical settlement broker in accordance with the instructions on the form;~~

~~(3) — In the case of group insurance coverage, submission of a form substantially similar to the NAIC's most current form describing verification of group life insurance benefits;~~

~~1. — Which has been completed by the viatical settlement provider or viatical settlement broker in accordance with the instructions on the form, and~~

~~2. — Which has previously been referred to the group policyholder and completed to the extent the information is available to the group policyholder.~~

~~b. — Nothing in this subrule shall prohibit a life insurance company and a viatical settlement provider or a viatical settlement broker from using another verification of coverage form that has been mutually agreed upon in writing in advance of submission of the request.~~

~~c. — A life insurance company may not charge a fee for responding to a request for information from a viatical settlement provider or viatical settlement broker in compliance with this subrule in excess of any usual and customary charges to contract holders, certificate holders or insureds for similar services.~~

~~d. — The life insurance company may send an acknowledgment of receipt of the request for verification of coverage to the policyowner(s) or certificate holder(s) and, in cases in which the policyowner or certificate holder is other than the insured, to the insured. The acknowledgment may contain a description of any accelerated death benefit that is available under a provision of or rider to the life insurance contract and said acknowledgment may compare the benefits of accelerating the death benefits to the viatication of the policy.~~

~~e. — If the viatical settlement provider submits to the insurer a copy of the owner's or insured's certification described in subrule 48.9(8) when the provider submits a request to the insurer to effect the transfer of the policy or certificate to the viatical settlement provider, the copy shall be deemed to conclusively establish that the viatical settlement contract satisfies the requirements of this subrule and the insurer shall timely respond to the request.~~

48.9(10) A life insurance company may not charge a fee for responding to a request for information from a viatical settlement provider or viatical settlement broker in compliance with this rule in excess of any usual and customary charges to contract holders, certificate holders or insureds for similar services.

48.9(11) In recommending a viatical settlement contract, viatical settlement brokers and viatical settlement providers shall make suitable recommendations.

ITEM 14. Rescind rule **191—48.10(508E)**.

ITEM 15. Renumber rule **191—48.12(508E)** as **191—48.10(508E)**.

ITEM 16. Amend renumbered rule 191—48.10(508E) as follows:

191—48.10(508E) Penalties; injunctions; civil remedies; cease and desist.

48.10(1) Unfair trade practices. ~~A Pursuant to 2008 Iowa Acts, Senate File 2392, section 17, a violation of this rule 48.4(508E), 48.5(508E), 48.6(508E), 48.7(508E) or 48.9(508E) shall be considered an unfair trade practice under Iowa Code chapter 507B, and a violator shall be subject to the penalties contained in that chapter.~~

48.10(2) Unauthorized insurer. A person doing the activities of a viatical settlement provider or a viatical settlement broker without a license under this chapter shall be deemed an unauthorized insurer and shall be subject to the penalties of Iowa Code chapter 507A.

48.10(3) License revocation and denial. The commissioner may ~~refuse to issue, suspend, revoke, or refuse to issue, or refuse to~~ renew the license of a viatical settlement provider or viatical settlement broker ~~if the commissioner finds that:~~ for violation of rule 48.3(508E).

~~a. — There was any material misrepresentation in the application for the license;~~

~~b. — The viatical settlement provider or viatical settlement broker or any officer, partner, member or key management employee has been convicted of fraudulent or dishonest practices, is subject to a final administrative action or is otherwise shown to be untrustworthy or incompetent;~~

~~c. — The viatical settlement provider made unreasonable payments to viators;~~

~~d. — The viatical settlement provider or viatical settlement broker or any officer, partner, member or key management employee has been found guilty of, or has pleaded guilty or nolo contendere to, any felony or to a misdemeanor involving fraud or moral turpitude, regardless of whether a judgment of conviction has been entered by the court;~~

~~e. — The viatical settlement provider has entered into any viatical settlement contract that has not been approved pursuant to this rule;~~

~~f. —The viatical settlement provider has failed to honor contractual obligations set out in a viatical settlement contract;~~

~~g. —The viatical settlement provider or viatical settlement broker no longer meets the requirements of rule 48.3(508E) for initial licensure;~~

~~h. —The viatical settlement provider has assigned, transferred or pledged a viaticated policy to a person other than a viatical settlement provider licensed in this state, a viatical settlement purchaser, an institutional buyer as defined in rule 191—50.46(502) or a qualified institutional buyer as defined in Rule 144A of the Federal Securities Act of 1933, a financing entity, a special purpose entity, or a related provider trust; or~~

~~i. —The viatical settlement broker or viatical settlement provider or any of its officers, partners, members or key management personnel has violated any provision of Iowa Code chapter 508E or of these rules.~~

~~48.10(4) If the commissioner denies a license application or suspends, revokes or refuses to renew the license of a viatical settlement provider or viatical settlement broker, the commissioner shall conduct a hearing in accordance with 191—Chapters 2 and 3.~~

~~48.10(5) 48.10(4) A viatical settlement provider licensed in this state that fails to file the annual statement referred to in 2008 Iowa Acts, Senate File 2392, section 6, or the annual audited financial statement referred to in subparagraph 48.3(1)“a”(5) and paragraph 48.3(6)“b” 48.3(1)“a”(1), in the time required shall pay and forfeit an administrative penalty in the sum of \$500 for deposit pursuant to Iowa Code section 505.7 2008 Iowa Acts, Senate File 2392, section 16. The viatical settlement provider’s right to transact further new business in this state shall immediately cease until the provider has fully complied with this rule.~~

~~48.10(6) In addition to the penalties and other enforcement provisions of this rule, the commissioner may seek an injunction in a court of competent jurisdiction and may apply for temporary and permanent orders that the commissioner determines are necessary to restrain the person from committing the violation.~~

~~48.10(7) The commissioner may issue, in accordance with 191—Chapters 2 and 3, a cease and desist order upon a person that violates any provision of these rules, any regulation or order adopted by the commissioner or any written agreement entered into with the commissioner.~~

~~48.10(8) 48.10(5) If Pursuant to 2008 Iowa Acts, Senate File 2392, section 16, if the commissioner finds that an activity in violation of this rule presents an immediate danger to the public that requires an immediate final order, the commissioner may issue an emergency cease and desist order reciting with particularity the facts underlying the findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent and remains in effect for 90 days. If the commissioner begins nonemergency cease and desist proceedings, the emergency cease and desist order remains effective, absent an order by a court of competent jurisdiction pursuant to 191—Chapters 2 and 3.~~

ITEM 17. Rescind rule 191—48.11(508E) and adopt the following **new** rule in lieu thereof:

191—48.11(252J) Suspension for failure to pay child support.

48.11(1) Upon receipt of a certificate of noncompliance from the child support recovery unit (CSRU), the commissioner shall issue a notice to the viatical settlement broker that the viatical settlement broker’s pending application for licensure, pending request for renewal, or current license will be suspended 30 days after the date of the notice. Notice shall be sent to the viatical settlement broker’s last-known address by regular mail.

48.11(2) The notice shall contain the following items:

a. A statement that the commissioner intends to suspend the viatical settlement broker’s application, request for renewal or current license in 30 days;

b. A statement that the viatical settlement broker must contact the CSRU to request a withdrawal of the certificate of noncompliance;

c. A statement that the viatical settlement broker’s application, request for renewal or current license will be suspended if the certificate of noncompliance is not withdrawn;

d. A statement that the viatical settlement broker does not have a right to a hearing before the commissioner, but that the viatical settlement broker may file an application for a hearing in district court pursuant to Iowa Code section 252J.9;

e. A statement that the filing of an application with the district court will stay the proceedings of the commissioner;

f. A copy of the certificate of noncompliance.

48.11(3) The filing of an application for hearing with the district court will stay all suspension proceedings until the commissioner is notified by the district court of the resolution of the application.

48.11(4) If the commissioner does not receive a withdrawal of the certificate of noncompliance from the CSRU or a notice from a clerk of court that an application for hearing has been filed, the commissioner shall suspend the viatical settlement broker's application, request for renewal or current license 30 days after the notice is issued.

48.11(5) Upon receipt of a withdrawal of the certificate of noncompliance from the CSRU, suspension proceedings shall halt, and the named viatical settlement broker shall be notified that the proceedings have been halted. If the viatical settlement broker's license has already been suspended, the license shall be reinstated if the viatical settlement broker is otherwise in compliance with this chapter. All fees required for license renewal or license reinstatement must be paid by the viatical settlement broker, and all continuing education requirements must be met before the viatical settlement broker's license will be renewed or reinstated after a license suspension or revocation pursuant to this rule.

ITEM 18. Adopt the following new rule 191—48.12(261):

191—48.12(261) Suspension for failure to pay student loan.

48.12(1) The commissioner shall deny the issuance or renewal of a viatical settlement broker license upon receipt of a certificate of noncompliance from the college student aid commission (CSAC) according to the procedures set forth in Iowa Code sections 261.126 and 261.127. In addition to the procedures contained in those sections, this rule shall apply.

48.12(2) Upon receipt of a certificate of noncompliance from the CSAC according to the procedures set forth in Iowa Code sections 261.126 and 261.127, the commissioner shall issue a notice to the viatical settlement broker that the viatical settlement broker's pending application for licensure, pending request for renewal, or current license will be suspended 30 days after the date of the notice. Notice shall be sent to the viatical settlement broker's last-known address by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the applicant or licensed viatical settlement broker may accept service personally or through authorized counsel.

48.12(3) The notice shall contain the following items:

a. A statement that the commissioner intends to suspend the viatical settlement broker's application, request for renewal or current license in 60 days;

b. A statement that the viatical settlement broker must contact the CSAC to request a withdrawal of the certificate of noncompliance;

c. A statement that the viatical settlement broker's application, request for renewal or current license will be suspended if the certificate of noncompliance is not withdrawn or, if the current license is on suspension, a statement that the current license will be revoked;

d. A statement that the viatical settlement broker does not have a right to a hearing before the commissioner, but that the viatical settlement broker may file an application for a hearing in district court pursuant to Iowa Code section 261.127;

e. A statement that the filing of an application with the district court will stay the proceedings of the commissioner;

f. A copy of the certificate of noncompliance.

48.12(4) The effective date of revocation or suspension of a viatical settlement broker license, as specified in the notice required by Iowa Code section 261.126, shall be 60 days following service of the notice upon the applicant or licensed viatical settlement broker.

48.12(5) In the event an applicant or licensed viatical settlement broker timely files a district court action following service of notice by the commissioner pursuant to Iowa Code section 261.127, the commissioner's suspension proceedings will be stayed until the commissioner is notified by the district court of the resolution of the application. Upon receipt of a court order lifting the stay, or otherwise directing the commissioner to proceed, the commissioner shall continue with the intended action described in the notice. For purposes of determining the effective date of the denial of the issuance or renewal of a viatical settlement broker license, the commissioner shall count the number of days before the action was filed and the number of days after the court disposed of the action.

48.12(6) If the commissioner does not receive a withdrawal of the certificate of noncompliance from the CSAC or a notice from a clerk of court that an application for hearing has been filed, the commissioner shall suspend the viatical settlement broker's application, request for renewal or current license 60 days after the notice is issued.

48.12(7) Upon receipt of a withdrawal of the certificate of noncompliance from the CSAC, suspension proceedings shall halt, and the named viatical settlement broker shall be notified that the proceedings have been halted. If the viatical settlement broker's license has already been suspended, the license shall be reinstated if the viatical settlement broker is otherwise in compliance with this chapter. All fees required for license renewal or license reinstatement must be paid by the viatical settlement broker, and all continuing education requirements must be met before the viatical settlement broker's license will be renewed or reinstated after a license suspension or revocation pursuant to Iowa Code section 261.126.

48.12(8) The commissioner shall notify the viatical settlement broker in writing through regular first-class mail, or such other means as the commissioner deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of the viatical settlement broker license, and shall similarly notify the viatical settlement broker when the viatical settlement broker license is reinstated following the commissioner's receipt of a withdrawal of the certificate of noncompliance.

48.12(9) Notwithstanding any statutory confidentiality provision, the commissioner may share information with the CSAC for the sole purpose of identifying viatical settlement brokers subject to enforcement under Iowa Code chapter 261.

ITEM 19. Renumber rule **191—48.13(508E)** as **191—48.14(508E)**.

ITEM 20. Adopt the following new rule 191—48.13(82GA,SF2428):

191—48.13(82GA,SF2428) Suspension for failure to pay state debt.

48.13(1) The commissioner shall deny the issuance or renewal of a viatical settlement broker license upon receipt of a certificate of noncompliance from the centralized collection unit of the department of revenue according to the procedures in 2008 Iowa Acts, Senate File 2428. In addition to the procedures set forth in 2008 Iowa Acts, Senate File 2428, this rule shall apply.

48.13(2) Upon receipt of a certificate of noncompliance from the centralized collection unit of the department of revenue according to the procedures set forth in 2008 Iowa Acts, Senate File 2428, the commissioner shall issue a notice to the viatical settlement broker that the viatical settlement broker's pending application for licensure, pending request for renewal, or current license will be suspended 30 days after the date of the notice. Notice shall be sent to the viatical settlement broker's last-known address by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the applicant or licensed viatical settlement broker may accept service personally or through authorized counsel.

48.13(3) Pursuant to 2008 Iowa Acts, Senate File 2428, section 14, the notice shall contain the following items:

a. A statement that the commissioner intends to suspend the viatical settlement broker's application, request for renewal or current license in 60 days;

b. A statement that the viatical settlement broker must contact the centralized collection unit of the department of revenue to schedule a conference or to otherwise obtain a withdrawal of the certificate of noncompliance;

c. A statement that the viatical settlement broker's application, request for renewal or current license will be suspended or denied if the commissioner does not receive a withdrawal of the certificate of noncompliance from the centralized collection unit of the department of revenue within 30 days of the issuance of notice under this rule; or, if the current license is on suspension, a statement that the viatical settlement broker's current license will be revoked;

d. A statement that the viatical settlement broker does not have a right to a hearing before the commissioner, but that the viatical settlement broker may file an application for a hearing in district court pursuant to 2008 Iowa Acts, Senate File 2428, section 15;

e. A statement that the filing of an application with the district court will stay the proceedings of the commissioner;

f. A copy of the certificate of noncompliance.

48.13(4) Viatical settlement brokers shall keep the commissioner informed of all court actions and all actions taken by the centralized collection unit of the department of revenue under or in connection with 2008 Iowa Acts, Senate File 2428; and viatical settlement brokers shall provide to the commissioner, within seven days of filing or issuance, copies of all applications filed with the district court pursuant to 2008 Iowa Acts, Senate File 2428, section 15, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the centralized collection unit of the department of revenue.

48.13(5) The effective date of revocation or suspension of a viatical settlement broker license, as specified in the notice required by 2008 Iowa Acts, Senate File 2428, section 14, and subrule 48.13(2), shall be 60 days following service of the notice upon the applicant or licensed viatical settlement broker.

48.13(6) In the event an applicant or licensed viatical settlement broker timely files a district court action following service of notice by the commissioner pursuant to 2008 Iowa Acts, Senate File 2428, section 15, the commissioner's suspension proceedings will be stayed until the commissioner is notified by the district court of the resolution of the application. Upon receipt of a court order lifting the stay, or otherwise directing the commissioner to proceed, the commissioner shall continue with the intended action described in the notice. For purposes of determining the effective date of the denial of the issuance or renewal of a viatical settlement broker license, the commissioner shall count the number of days before the action was filed and the number of days after the court disposed of the action.

48.13(7) If the commissioner does not receive a withdrawal of the certificate of noncompliance from the centralized collection unit of the department of revenue or a notice from a clerk of court that an application for hearing has been filed, the commissioner shall suspend the viatical settlement broker's application, request for renewal or current license 60 days after the notice is issued.

48.13(8) Upon receipt of a withdrawal of the certificate of noncompliance from the centralized collection unit of the department of revenue, suspension proceedings shall halt, and the named viatical settlement broker shall be notified that the proceedings have been halted. If the viatical settlement broker's license has already been suspended, the license shall be reinstated if the viatical settlement broker is otherwise in compliance with this chapter. All fees required for license renewal or license reinstatement must be paid by the viatical settlement broker, and all continuing education requirements must be met before the viatical settlement broker's license will be renewed or reinstated after a license suspension or revocation pursuant to 2008 Iowa Acts, Senate File 2428.

48.13(9) The commissioner shall notify the viatical settlement broker in writing through regular first-class mail, or such other means as the commissioner deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of the viatical settlement broker license, and shall similarly notify the viatical settlement broker when the viatical settlement broker license is reinstated following the commissioner's receipt of a withdrawal of the certificate of noncompliance.

48.13(10) Notwithstanding any statutory confidentiality provision, the commissioner may share information with the centralized collection unit of the department of revenue for the sole purpose of identifying viatical settlement brokers subject to enforcement under 2008 Iowa Acts, Senate File 2428.

ITEM 21. Amend **191—Chapter 48**, as follows:

These rules are intended to implement Iowa Code chapter 508E as amended by 2008 Iowa Acts, Senate File 2392; Iowa Code chapters 252J and 261; and 2008 Iowa Acts, Senate File 2428.

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